

MINUTES OF JULY 23, 2018

The regular meeting of the Sussex County Board of Adjustment was held on Monday, July 23, 2018, at 7:00 p.m. in the County Council Chambers, 2 The Circle, Georgetown, Delaware.

The meeting was called to order at 7:00 p.m. with Chairman John Mills presiding. The Board members present were: Mr. Dale Callaway, Ms. Ellen Magee, Mr. Bruce Mears, Mr. John Mills and Mr. Brent Workman. Also in attendance were Mr. James Sharp, Esquire – Assistant County Attorney, and staff members Ms. Janelle Cornwell, Planning and Ms. Christin Headley – Recording Secretary

The Pledge of Allegiance was led by Mr. Mills.

Motion by Ms. Magee, seconded by Mr. Callaway, and carried unanimously to approve the agenda as circulated. Motion carried 5 – 0.

Mr. Sharp read a statement explaining how the Board of Adjustment meeting is conducted and the procedures for hearing the case.

PUBLIC HEARINGS

Case No. 12166 – Ralph Cook Jr. seeks variances from the side yard setback for an existing structure (Section 115-25 of the Sussex County Zoning Code). The property is located on the west side of Bowman Rd., approximately 1, 694 feet north of Ellis Mill Rd. 911 Address: 3432 Bowman Rd., Seaford. Zoning District: AR-1. Tax Parcel: 531-17.00-17.12

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning received no correspondence in support or in opposition to the Application and one (1) mail return. The applicant seeks a variance of 11.2 ft. and 11.4 ft side yard setback for an existing dwelling.

Mr. Ralph Cook, Jr. was sworn in to give testimony.

Mr. Cook testified that the home was in foreclosure when he purchased it in 1979; there was no survey; he built an addition to the side of the home in 1986. He testified that he was not aware of this violation until he tried to sell the home and got a survey completed; the neighboring property will not be developed as it is State property and is preserved land.

Mr. Cook testified that the only place the garage could be built was on the right side due to the placement of the septic field, the driveway, the well and access to the house therefore making this a unique situation; he did not create the situation because he purchased the property without a survey and accepted the word of the previous owner regarding the property lot lines; this will not alter the essential character of the neighborhood as many of the neighboring homes have similar attached garages; he asked that this variance be granted to bring this property into compliance with the Sussex County building code.

Mr. Cook testified that the garage has been there for 30 years; that there have been no complaints and no further additions.

The Board found that one person appeared in support of and none in opposition to the Application.

Mr. Greg Sizemore was sworn in to give testimony.

Mr. Sizemore testified that it was an honest mistake by Mr. Cook and that Mr. Cook had no idea that he was not in compliance until a survey was completed prior to the sale of the property.

Mr. Workman moved to approve Variance Application No. 12166 for the requested variances for the following reasons:

1. The septic, water and well made this property unique.
2. It's the minimum variance to make reasonable use of the property.
3. By granting the variances it will not alter the essential character of the neighborhood.
4. It is the minimum variance to afford relief.

Mr. Workman moved, seconded by Mr. Callaway, and carried to **approve the variances for the reasons stated.** Motion carried 5 – 0.

The vote by roll call; Mr. Workman – yea, Ms. Magee – yea, Mr. Mears – yea, Mr. Mills – yea, and Mr. Callaway – yea

Case No. 12167 – Diane M. Knizer seeks variances from the rear yard setback for existing structures (Section 115-25 & 115-183 of the Sussex County Zoning Code). The property is located on the south side of Frontier Rd., approximately 350 feet west of Mulberry Knoll Rd. 911 Address: 34756 Frontier Rd., Lewes. Zoning District: AR-2. Tax Parcel: 334-18.00-141.00

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning received no correspondence in support or in opposition to the Application and one (1) mail return. The applicant seeks a variance of 4.1 ft rear yard setback for an existing screened porch and a variance of 1.4 ft rear yard setback for existing steps.

Ms. Diane Knizer and Mr. Jeffrey Burton were sworn in to give testimony. Shannon Carmean-Burton, Esquire presented the Application on behalf of the Applicants and submitted exhibit booklets to the Board.

Mrs. Carmean-Burton stated that included in the booklet are several letters of support; that the

lot is unique because of the lot shape, it is much wider than deep; the house was placed back further than the required front yard setback; the property cannot be developed in compliance with the zoning code without removing half of the screen porch making it so small to be usable; this situation was not created by the owner but by the builder and architect who the applicant relied on to follow the zoning codes; the variances will not alter the essential character of the neighborhood; and it is the minimum variance to afford relief.

Mr. Burton, Lane Builders and Ms. Knizer affirmed the statements made by Mrs. Carmean-Burton as true and correct.

Mr. Burton testified that the request for variance is due to an error created by his company and he apologized to the Board for having to request variances.

Ms. Knizer testified that she hired an architect and that the architect did not realize that putting a roof on the existing deck would create a setback issue.

Mr. Burton testified that the building permit was obtained by Lane Builders and, that either he or his designer signed for the permit.

Ms. Knizer testified that the architect was not present; she had engaged him, but when his designs did match her vision for the dwelling; she concluded her relationship with him and worked solely with Lane Builders.

Mr. Burton testified that the framer realized that the footings for the existing deck could be used for the proposed screen porch, he thought it could save money for the client and give Ms. Knizer a better product.

Ms. Knizer testified that she reached out several times; the owner of Lot 61 is a part-time resident; and she had not had any correspondence from him either in support or opposition.

Mr. Burton testified that he did not know if they were the exact same steps from the original deck, but they occupied almost the same footprint as they original steps.

Mr. Burton testified that the Cypress trees in the rear of the property are owned by the neighbor and that the density of the trees make it difficult to define the lot line for the rear of the property.

The Board found that no parties appeared in support of or in opposition to the Application.

Mr. Mears moved to approve Variance Application No. 12167 for the requested variances for the following reasons:

1. The uniqueness of the property is due to the house being placed farther back from the front setback which didn't leave enough room on the back to make an adequate screen porch.
2. The property could not be developed without this application
3. The applicant did not create this issue.
4. This addition will not alter the essential character of the neighborhood.
5. It is the minimum variance to afford relief.

Mr. Mears moved, seconded by Mr. Callaway, and carried to **approve the variances for the reasons stated.** Motion carried 5 – 0.

The vote by roll call; Mr. Workman – yea, Ms. Magee – yea, Mr. Mears – yea, Mr. Mills – yea, and Mr. Callaway – yea

Case No. 12168 – John H. Melling, Juanita G. Melling, & Sarah L. Guterman seeks a special use exception for a garage/studio apartment (Sections 115-23 and 115-210 of the Sussex County Zoning Code). The property is located on the north side near the end of Millcreek Rd., approximately 1.03 miles north of Shell Bridge Rd. 911 Address: 6145 Millcreek Rd., Laurel. Zoning District: AR-1. Tax Parcel: 432-2.00-20.00

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning received one (1) letter in support of the Application or none in opposition to the Application and zero mail returns. Ms. Cornwell stated that request is special use exception for a garage/studio apartment.

Ms. Juanita Melling was sworn in to testify. Shannon Carmean-Burton, Esquire presented the Application on behalf of the Applicants and submitted exhibit booklets to the Board.

Mrs. Carmean-Burton stated that included in the booklet is the letter of support which was read by Ms. Cornwell; that the apartment was on the property when purchased by the applicants; that the applicant could not find any information to prove that this was an existing non-conforming use which is the reason for the application; that all the kitchen equipment was removed from this apartment to bring it into compliance prior to the purchase by the applicant; this use will not affect the neighboring state wildlife property; Ms. Melling plans to rent this apartment seasonally.

Ms. Melling affirmed the statements made by Mrs. Carmean-Burton as true and correct.

The Board found that no parties appeared in support of or in opposition to the Application.

Ms. Magee moved to approve Application No. 12168 for the requested special use exception for the purposes of maintaining a garage/studio apartment as it will not substantially affect adversely the uses of adjacent neighboring properties as it has been existing for many years.

Motion by Ms. Magee, seconded by Mr. Callaway, and carried unanimously that the **special use exception be granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Workman – yea, Ms. Magee – yea, Mr. Mears – yea, Mr. Mills – yea, and Mr. Callaway – yea.

Case No. 12132 – Richard & Rhonda Zimmerman seek variances from the front yard setback for existing and proposed structures (Section 115-42 of the Sussex County Zoning Code). The property is located on the west side of North Dr., at the end of 2nd St. 911 Address: 301 North Dr., Rehoboth Beach. Zoning District: GR. Tax Parcel: 334-13.00-61.03

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning received no correspondence in support or in opposition to the Application and one (1) mail return. The applicant seeks a variance of 5.9 ft front yard setback for the existing house and a variance of 15.8 ft front yard setback for the existing enclosed porch. This case was on a previous agenda but was held over to allow the applicant to hire an attorney.

Ms. Magee recused herself from the hearing and left chambers.

Mr. Richard Zimmerman and Rhonda Zimmerman were sworn in to give testimony. David Hutt, Esquire presented the Application on behalf of the Applicants and submitted exhibit booklets to the Board.

Mr. Hutt stated that the manufactured home is fifty (50) years old and the applicants want to replace it with a stick-built home; the applicants wish to replace the existing home without affecting the location of the pool, deck or tiki bar in the rear of the home and the only way to achieve this was to apply for front yard setbacks. Mr. Hutt stated that the applicants have worked with their architect to make the screened porch more in compliance and have submitted a survey which would have the porch 20.1 ft from the front lot line.

Mr. Hutt confirmed that the following variances are being requested: 1.9 ft for the storage building; 5.9 ft for the garage; 4.9 ft for the house; 10.9 ft for the porch and 12.9 ft for the steps.

Mr. Hutt stated that this property is unique because when this property was purchased there were already variances in place for the front yard setback for the existing dwelling; it could not be otherwise developed without major changes to the back yard amenities; the variances are necessary to allow reasonable use of the property due to the age of the existing manufactured home, it is necessary to replace it; the difficulty was not created by the applicant as the home was already on the property when they purchased it; will not affect the essential character of the neighborhood as six (6) neighboring homes have similar variances; these variances are the minimum to allow relief.

Mr. Zimmerman affirmed the statements made by Mr. Hutt as true and correct.

The Board found that one person appeared in support of and no parties in opposition to the Application.

Mr. Denis LaMartino was sworn in to give testimony.

Mr. LaMartino testified that he is in favor of the variance request, he said that the improvements to the Zimmerman property will add value to all the neighboring homes.

Mr. Mears moved to approve Variance Application No. 12132 for the requested variance for the following reasons:

1. The uniqueness of the property starts with the existing dwelling and the existing pool.
2. It cannot be developed without these variances.
3. This was not created by the applicant.
4. It will not alter the essential character of the neighborhood but improve it.
5. It is a minimum variance because the applicant changed the porch size to reduce the amount of variance required.

Motion by Mr. Mears, seconded by Mr. Callaway, and carried unanimously that the **variance be granted for the reasons stated**. Motion carried 4 – 0.

The vote by roll call; Mr. Workman – yea, Mr. Mears – yea, Mr. Mills – yea, and Mr. Callaway – yea.

Case No. 12173 – NSBM, LLC seeks a special use exception to use a manufactured home type structure as an office (Sections 115-88 & 115-210 of the Sussex County Zoning Code). The property is located on the south side of John. J. Williams Hwy. (Rt. 24), west of Love Creek. 911 Address: 20860 Boat Hole Blvd., Lewes. Zoning District: M. Tax Parcel: 234-7.00-108.00

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning received no correspondence in support of the Application or in opposition to the Application and four (4) mail returns. Ms. Cornwell stated that request is special use exception to use a manufactured home type structure as an office.

Michael Stortini was sworn in to give testimony.

Michael Stortini testified that he is representing the applicant NSBM, LLC and he distributed exhibit booklets to the Board. He testified that the request is a special use exception to place a sales trailer on the Love Creek property; that the reason for the request is that all the existing buildings on the property are being demolished; that this request will not substantially affect adversely the uses of

adjacent and neighboring properties because the property is over fourteen (14) acres and they will use the current entrance to the property and, that the trailer will be temporary while a model is built that can be used as a sales office.

Mr. Stortini testified that the current tenant will remain but that he only occupies a small portion of the property.

The Board found that no parties appeared in support of or in opposition to the Application.

Mr. Mears moved to approve Application No. 12173 for the requested special use exception for the purposes to use a manufactured structure as a sales office for a period of three (3) years as it will not substantially affect adversely the uses of adjacent neighboring properties.

Motion by Mr. Mears, seconded by Mr. Callaway, and carried unanimously that the **special use exception be granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Workman – yea, Ms. Magee – yea, Mr. Mears – yea, Mr. Mills – yea, and Mr. Callaway – yea.

Case No. 12169 – Furniture & More seeks a special use exception to place a tent for special events (Sections 115-80 & 115-210 of the Sussex County Zoning Code). The property is located on the west side of Beacon Dr., north of Lighthouse Rd. 911 Address: 38993 Beacon Dr., Fenwick Island. Zoning District: C-1. Tax Parcel: 134-23.00-3.04

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning received no correspondence in support of the Application, seven (7) letters in opposition to the Application and five (5) mail returns. Ms. Cornwell stated that request is special use exception to use a tent for special events.

Ms. Cornwell stated that this was not a renewal but that the applicant did have permission last year to have the tent up for three (3) days.

Mr. Darrell Millman was sworn in to give testimony.

Mr. Millman, Manager for Furniture & More, testified that traditionally they have a tent sale on Memorial Day and Labor Day weekends; the application is to ask for the exception twice a year for a total of ten (10) days each time; the tent is positioned 40 ft away from the community in the rear of the property and therefore will not impede traffic coming to and from the neighboring property; and that this special use exception will not substantially affect adversely the uses of adjacent neighboring properties.

Mr. Millman testified that there were some complaints about the placement of the tent and that it created a visibility issue the first time they used it, but there were no complaints the following times.

Mr. Millman testified that store hours are as follows: Sunday 11am – 6 pm, Monday through Thursday 10 am – 6 pm, and Friday and Saturday 10 am – 7 pm.

Mr. Millman testified that the cars in the picture were parked in the right-of-way to the development in the rear, however, he could not confirm if they were patrons of the business' or if they were family members visiting the development in the rear. He testified that there is a security guard overnight on the premises.

Mr. Millman testified that parking is always an issue and that High Stakes is a busy location and uses the majority of parking; that the tent measurements are 40 ft X 60 ft but could not say if the stakes and tie-downs were included; that in addition to the seven (7) parking spaces, the tent will occupy additional space that is not designated for parking and that the only traffic issues are to enter onto Route 54 because of summer beach traffic with or without the tent.

The Board found that no parties appeared in support of and ten (10) in opposition to the Application.

Randy Wallenhurst, Linda Bauers, George Bennitt, and Sandra Simkins were sworn in to give testimony.

The Board took a five (5) minute recess.

Mr. Wallenhurst testified that he is a part-time resident at the community across from Furniture & More on Route 54, and that he bought his property for the view and his view is impeded by the tent.

Ms. Bauers testified that she is a resident at Lighthouse View Condominiums which is the building at the rear of the applicant's property. Ms. Bauers distributed some pictures to the Board. She testified that this is a safety issue; that the furniture extends beyond the tent; people are milling about in the egress and delivery trucks are coming and going; cars have been parked in the right-of-way to her development blocking both a fire hydrant and the key pad entrance; furniture is on the sidewalk, people have to walk on the street; that visibility is blocked by the tent; and that the pictures submitted were taken when the tent was present.

Ms. Simkins testified that she is the photographer who took the pictures submitted by Ms. Bauers; she submitted additional pictures to the Board. She testified that there is a parking problem even when the tent is not present, but the tent amplifies the issue; that a car cannot enter the

development when cars are parked in the easement; and that even if the tent was moved, it would still be a safety issue.

Mr. Bennett testified that he is the treasurer for the homeowner's association; that having the tent in place affects sixty (60) homeowners, their family and friends, it is a safety issue which is magnified by having the tent sale; that placing the tent elsewhere on the property still substantially affects adversely the use of the neighboring property.

Mr. Millman testified that the parking is an issue and the tent is not creating that problem; that he did not know the location of the easement; that he does not know the owner's name other than John. He testified that High Stakes pay for 30% and Furniture & More pay for 70% of the parking.

Mr. Workman moved to table Special Use Exception Application No. 12169 to give the Board more time to look at the additional materials submitted.

Mr. Sharp stated that the record is closed.

Motion by Mr. Workman, seconded by Mr. Callaway, and carried unanimously that the **case be tabled to August 6, 2018 meeting**. Motion carried 5 – 0.

The vote by roll call; Mr. Workman – yea, Ms. Magee – yea, Mr. Mears – yea, Mr. Mills – yea, and Mr. Callaway – yea.

Meeting was adjourned at 9:34 p.m.